

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

M.D., by her next friend, Sarah R.	§	
Stukenberg, <i>et al.</i> ,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. 2:11-CV-00084
	§	
GREG ABBOTT, in his official capacity as	§	
Governor of the State of Texas, <i>et al.</i> ,	§	
	§	
<i>Defendants.</i>	§	
	§	

**DEFENDANTS' RESPONSE IN OPPOSITION TO CLASS PLAINTIFFS' FOURTH
APPLICATION FOR ATTORNEYS FEES AND EXPENSES**

Plaintiffs' Fourth Application for Attorneys Fees and Expenses (ECF 1493) should be denied in part because Plaintiffs seek to recover fees related to motions that remain pending before the Court and are not, therefore, ripe for consideration. Additionally, Plaintiffs' fees should be reduced because certain fees are not recoverable, for the reasons set forth herein.

I. Fees Related to Pending Motions Are Not Ripe for Consideration

In determining whether fees sought by a party in litigation are reasonable, the Court must take into account whether those fees represent work for which the party obtained a sufficient degree of success. *Hensley v. Eckerhart*, 461 U.S. 424, 435–36 (1983); *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–18 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989). Here, Plaintiffs seek recovery for thousands of dollars of work related to a contempt motion that remains pending before this Court.

Without knowing Plaintiffs' success or failure on this motion, it is not possible to perform a degree-of-success analysis. Because these fees, which are identified in the charts below, are not ripe for analysis, Defendants request that these entries be excluded from any fee award. *See Frew v. Traylor*, 688 F. App'x 249, 257 (5th Cir. 2017) (“[T]he most critical factor [in determining a reasonable fee] is the degree of success obtained.”).

Yetter Coleman [ECF 1493 at Ex. A-1]: \$3,740 in fees are not ripe for consideration

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Narrative ¹	Amount that is Not Ripe
02/07/2023	Yetter, R. Paul	Partner	2.30	1,265.00	550	Attention to recent developments, including review of transcript of recent court hearing (1.0); consider strategies regarding potential contempt motion and begin outlining a possible motion (1.3).	715.00
02/08/2023	Yetter, R. Paul	Partner	4.4	2420.00	550.00	Continued review of prior court hearing transcript and related monitor reports (1.5); consider strategies regarding potential	1595.00

¹ Where only parts of an entry are not ripe for consideration, those tasks are highlighted.

						contempt motion and begin work on same (1.5); emails with co-counsel regarding same (1.4).	
02/09/2023	Yetter, R. Paul	Partner	4.4	275.00	550.00	Continued review of prior court hearing transcript and related monitor reports (.2); consider strategies regarding potential contempt motion and begin work on same (.3).	165.00
02/21/2023	Yetter, R. Paul	Partner	0.5	275.00	550.00	Continued attention to potential motion for contempt based on the state's failures to comply with the court's remedial orders.	275.00
02/27/2023	Yetter, R. Paul	Partner	0.5	275.00	550.00	Continue work on potential contempt issues, including recent media reports of abusive situation with	275.00

						PMC children in Houston.	
02/28/2023	Yetter, R. Paul	Partner	0.3	165.00	550.00	Continue work on potential contempt issues, including recent media reports of abusive situation with PMC children in Houston.	165.00
03/01/2023	Yetter, R. Paul	Partner	1.0	550.00	550.00	Continue work on potential contempt issues; attention to ongoing issues regarding the Refuge.	550.00
					Total:		\$ 3,740.00

Children's Rights [ECF 1493 at Ex. B-1]: \$ 17,938.41 in fees are not ripe for consideration

Date	Timekeeper	Duration	Rate	Amount	Narrative
6/13/2022	Stephen Dixon	0.75	\$ 475	\$ 356.25	Call with internal Texas team re contempt motion, analysis, planning.
6/13/2022	Stephen Dixon	0.95	\$ 475	\$ 451.25	Call with key contact re facts on ground for contempt and monitoring. Connected to caseworkers.
6/21/2022	Stephen Dixon	1.5	\$ 475	\$ 712.50	Reviewing Monitors' Report re contempt filing.
6/21/2022	Stephen Dixon	0.4	\$ 475	\$ 190.00	Emails with Monitor and key Texas contacts re fact analysis and contempt

					filing.
6/24/2022	Stephen Dixon	2.25	\$ 475	\$ 1,068.75	Reviewing Fourth Report re motion for contempt.
6/24/2022	Stephen Dixon	0.05	\$ 475	\$ 23.75	Email to team re fact analysis for motion for contempt.
6/27/2022	Stephen Dixon	6.5	\$ 475	\$ 3,087.50	Reviewing Fourth Monitors' Report and June 6 hearing transcript, in order to analyze case as to contempt; extensive memo re same, email to internal Texas team re same.
6/29/2022	Madeleine MacNeil Kinney	1.407	\$ 425	\$ 597.98	Review monitoring report and court transcript to prepare for contempt hearing.
6/30/2022	Samantha Bartosz	0.75	\$550	\$ 412.50	meeting to discuss status on contempt factual research
6/30/2022	Stephen Dixon	0.75	\$ 475	\$ 356.25	Internal team meeting re contempt analysis re new facts
6/30/2022	Madeleine MacNeil Kinney	0.75	\$ 425	\$ 318.75	Meet with SD and SB re: contempt prep.
7/5/2022	Samantha Bartosz	0.75	\$550	\$ 412.50	meeting with MK re status and evidence on contempt issues
7/5/2022	Madeleine MacNeil Kinney	0.75	\$ 425	\$ 318.75	Prepare for and meet with SB re: analysis of remedial orders and contempt.
7/6/2022	Samantha Bartosz	2.5	\$550	\$ 1,375.00	review monitor's report and appendices for proofs of non-compliance to support contempt motion
7/13/2022	Samantha Bartosz	2	\$550	\$ 1,100.00	continue review of record for non-compliance and contempt evidence

8/17/2022	Samantha Bartosz	1.75	\$550	\$ 962.50	attend meeting to discuss contempt issues raised by court and continue to assemble contempt support and assess use
9/7/2022	Samantha Bartosz	1	\$550	\$ 550.00	conduct internal staff meeting re status and next steps
9/7/2022	Stephen Dixon	0.5	\$ 475	\$ 237.50	Meeting to discuss potential contempt, strategy, planning.
9/7/2022	Madeleine MacNeil Kinney	1	\$ 425	\$ 425.00	Internal team meeting.
9/13/2022	Stephen Dixon	0.5	\$ 475	\$ 237.50	Review/analysis of public documents re developing strategy for monitoring and contempt motion.
9/16/2022	Stephen Dixon	1.5	\$ 475	\$ 712.50	Review and analysis of video (of Defendant) re monitoring and potential contempt motion; email to team re analysis.
1/31/2023	Madeleine MacNeil Kinney	0.2	\$ 425	\$ 85.00	Discuss contempt proceeding with SB.
2/1/2023	Samantha Bartosz	1	\$550	\$ 550.00	attend internal conference re status and contempt issues with SD and MK
2/1/2023	Stephen Dixon	0.5	\$ 475	\$ 237.50	Internal meeting re case analysis, strategy, and planning. Monitoring work.
2/1/2023	Madeleine MacNeil Kinney	0.481	\$ 425	\$ 204.43	Review monitoring report and transcript in anticipation of contempt motion.
2/1/2023	Madeleine MacNeil Kinney	0.98	\$ 425	\$ 416.50	Call with S.Beisner, S.Bartosz and SD re: contempt analysis.
2/15/2023	Samantha Bartosz	0.5	\$550	\$ 275.00	attend meeting with CW and ML re status of contempt issues

2/15/2023	Stephen Dixon	0.05	\$ 475	\$ 23.75	Email to co-counsel re contempt analysis.
2/15/2023	Stephen Dixon	0.22	\$ 475	\$ 104.50	Meeting re contempt analysis.
2/16/2023	Stephen Dixon	0.7	\$ 475	\$ 332.50	Call with key contact re case workers, caseloads, contempt analysis.
3/29/2023	Samantha Bartosz	2.5	\$550	\$ 1,375.00	review monitor's Update to the Court on Site Visits and assess DFPS performance and contempt issues
4/6/2023	Stephen Dixon	0.65	\$ 475	\$ 308.75	Email to co-counsel with analysis re potential contempt motion.
4/6/2023	Stephen Dixon	0.25	\$ 475	\$ 118.75	Email to discuss motion for contempt analysis.
		Total:		\$ 17,938.41	

A Better Childhood [ECF 1493 at Ex. C-1]: \$ 3,308.34 in fees are not ripe for consideration

Date	Name	Hours	Rate	Amount	Description
2/13/23	David Baloche	0.60	\$ 300	\$180.00	Draft contempt motion [ECF 1376]
4/6/23	Marcia Lowry	0.17	\$ 550	\$ 91.67	Call with David Baloche to discuss possible contempt
4/7/23	Marcia Lowry	0.67	\$ 550	\$ 366.67	Review draft brief from David, email with comments to him re potential contempt claims
4/6/23	David Baloche	0.20	\$ 300	\$ 60.00	Meeting with Marcia Lowry re contempt motion [ECF 1376]
4/7/23	David Baloche	3.90	\$ 300	\$ 1,170.00	Draft contempt motion, CWOP section [ECF 1376]

4/7/23	David Baloché	1.80	\$ 300	\$ 540.00	Draft contempt motion, reporting mechanisms section [ECF 1376]
4/9/23	David Baloché	0.60	\$ 300	\$ 180.00	Edit contempt motion outline [ECF 1376]
4/10/23	David Baloché	2.40	\$ 300	\$ 720.00	Edit contempt motion outline [ECF 1376]
		Total:		\$ 3,308.34	

II. Yetter Coleman's Request for Fees Should Be Further Reduced by \$840

Yetter Coleman has requested \$254,649.55 in fees and expenses; once the \$3,740 attributable to pending motions is subtracted, that amount totals \$250,909.55. That amount should be further reduced by \$840 because Yetter Coleman appears to have mistakenly billed time spent on other cases to this one. In particular, Yetter Coleman seeks to recover for the following time entries that appear unrelated to this case:

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Narrative	Incorrect Amount
8/26/2021	Prince, Lisa	Paralegal	0.50	62.50	125.00	Review and revise Release of Judgment for attorney S. Brannan.	62.50
8/30/2021	Prince, Lisa	Paralegal	0.50	62.50	125.00	Revise and finalize Release of Judgment for attorney S. Brannan.	62.50
9/22/2021	Yetter, R. Paul	Partner	0.50	275.00	550.00	Emails regarding client's motion for MDL treatment (.2); initial review of new plaintiff's petition and consider strategy (.3).	275.00
9/23/2021	Yetter, R. Paul	Partner	0.50	275.00	550.00	Further review of new petition (.3); emails regarding	275.00

						strategy for MDL filing (.2).	
9/28/2021	Yetter, R. Paul	Partner	0.30	165.00	550.00	Further review of new petition (.3); emails regarding strategy for MDL filing (.2).	165.00
Total:							\$840.00

Because each of these time entries appears to be for work performed on other cases, the fee award to Yetter Coleman should be further reduced by \$840. With that additional reduction, the total amount of fees and expenses awarded to Yetter Coleman should be no more than \$250,069.55.

II. Children's Rights' Request for Fees Should Be Further Reduced by 50%

Children's Rights has requested \$150,447.50 in fees; once the \$ 17,938.41 attributed to pending motions is removed, that amount totals \$ 132,509.09. As a result of Children's Rights' continued failure to abide by the Court's billing instructions, that amount should be further reduced.

On multiple occasions this Court has admonished Children's Rights for vague and block billing. In its *Order Granting in Part Plaintiffs' First Application for Attorneys' Fees*, the Court explained:

The Court reviewed the legal standards and precedents as to block-billing; overstaffing; high turnover of attorneys' and pre-filing entries. Children's Rights engaged in all these practices which district courts in previous cases have noted to justify an across-the-board percentage reduction in the fee award, especially when such practices produce vague time records, excessive and duplicative hours, and unnecessary work.

ECF 908 at 8 n.4. In consideration of the above (and other factors), the Court reduced the lodestar amount it had calculated for Children's Rights by 50 percent. *Id.* at p. 8. The Court then reemphasized the admonishment in its *Order Granting in Part Plaintiffs' Second Application for*

Attorney's Fees. ECF 1296 at p. 10. This Court cited two examples of Children's Rights' insufficient

time entries from its Second Fee Application:

10/11/2019	Stephen Dixon	3.30	\$475.00	\$1,567.50	Legal research, preparation of motion, and email with co-counsel regarding contempt in case
10/14/2019	Stephen Dixon	0.58	\$475.00	\$275.50	Legal research and emails with team members regarding contempt motion

Id. In consideration of the vague entries (along with other objections), this Court awarded \$37,943.67 to Children's Rights in its Second Fee Award, approximately 35 percent less than Children's Rights requested. *Id.* at 11.

Once again, Children's Rights has numerous entries in the Fourth Fee Application that do not differ in any meaningful way from those entries this Court has previously identified as vague. Some examples of vague entries are reproduced in the following table:

Date	Amount	Narrative
1/21/2021	\$332.50	Telephone call with key contact regarding fact update
3/18/2021	\$825.00	Review overall status of state implementation of injunction order
4/1/2021	\$198.08	Legal research regarding monitoring
4/5/2021	\$158.18	Legal research and email TX legislation which may impact judgment, emails with co-counsel and contacts
4/13/2021	\$269.33	Telephone call with contact regarding fact for monitoring
4/20/2021	\$205.68	Telephone call with contact regarding facts for monitoring
5/3/2021	\$538.18	Preparing for TX Monitoring hearing
5/4/2021	\$950.00	Preparation for Texas Monitoring/Sanction hearing, emails regarding same
5/5/2021	\$831.25	Preparation for continuation of Texas hearing
7/8/2021	\$137.50	Exchange emails regarding update meeting with monitors
7/16/2021	\$118.75	Legal and fact update in case to full legal team
8/25/2021	\$198.08	Email to team regarding fact update for monitoring
12/3/2021	\$142.50	Email to team and review of document regarding monitoring facts
1/10/2022	\$253.18	Telephone call with team preparing for hearing

Date	Amount	Narrative
1/21/2022	\$118.75	Telephone call regarding case strategy
3/29/2022	\$166.25	Call with co-counsel preparing for hearing.
3/29/2022	\$213.75	Emails to Texas team re analysis and strategy for hearing.
4/28/2022	\$380.00	Emails to Texas legal team case analysis.
6/13/2022	\$142.50	Emails with contact and team re monitoring facts.
1/6/2023	\$118.75	Organizing material for Texas status hearing.
1/19/2023	\$237.50	Meeting with team re preparation for hearing, strategy, analysis.
4/5/2023	\$237.50	Call with Texas adult client.
4/6/2023	\$237.50	Call with adult client.
4/7/2023	\$237.50	Emails to 8 adult clients ahead of status hearing.

On two prior occasions this Court has spoken clearly on this issue. Unfortunately, Children's Rights has once again disregarded the Court's prior admonishments. Accordingly, Children's Rights requested fee award should be reduced by at least 50 percent.

III. Conclusion

For the reasons set forth herein, Plaintiffs' Fourth Fee Application should be denied in part, and Plaintiffs should be awarded no more than **\$553,269.65**, broken down by law firm as follows:

Law Firm	Requested Amount	Reduction	Maximum Award
Yetter Coleman	\$ 254,649.55	\$ 4,580.00	\$ 250,069.55
Children's Rights	\$ 150,447.50	\$ 84,192.95	\$ 66,254.55
A Better Childhood	\$ 240,253.89	\$ 3,308.34	\$ 236,945.55
Total	\$ 645,350.94	\$92,081.29	\$553,269.65

Date: January 18, 2024

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

s/Kimberly Gdula
KIMBERLY GDULA
State Bar No. 24052209
Southern District No. 10092074
Deputy Chief
General Litigation Division
KARL E. NEUDORFER
State Bar No. 24053388
Southern District No. 725939
Assistant Attorney General
Administrative Law Division
CLAYTON R. WATKINS
State Bar No. 24103982
Southern District No. 3663032
Assistant Attorney General
Administrative Law Division

P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 463-2120 | Fax (512) 370-0667
kimberly.gdula@oag.texas.gov
karl.neudorfer@oag.texas.gov
clayton.watkins@oag.texas.gov

ATTORNEYS FOR DEFENDANTS

Respectfully submitted,

s/Allyson N. Ho
ALLYSON N. HO
Attorney-in-Charge
State Bar No. 24033667
Southern District No. 1024306
SAVANNAH SILVER
State Bar No. 24129020
Southern District No. 3844454
Gibson, Dunn, & Crutcher LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
(214) 698-3100
(214) 571-2900 – Fax
aho@gibsondunn.com
ssilver@gibsondunn.com

PRERAK SHAH
State Bar No. 24075053
Southern District No. 2137529
Gibson, Dunn, & Crutcher LLP
811 Main Street, Suite 3000
Houston, TX 77002
(346) 718-6600
(346) 718-6620 – Fax
pshah@gibsondunn.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on January 18, 2024, an accurate copy of the foregoing document was electronically filed with the Clerk of the Court using the electronic case filing system, which automatically provided notice to all attorneys of record.

s/Allyson N. Ho

Allyson N. Ho